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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,825	10/18/2000	Dario C. Altieri	044574-5022-2	3716
9629	7590	08/26/2004	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			CANELLA, KAREN A	
			ART UNIT	PAPER NUMBER
			1642	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/690,825

Applicant(s)

ALTIERI, DARIO C.

Examiner

Karen A Canella

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17 and 105-127 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17, 105-115 and 119-127 is/are allowed.
- 6) ☐ Claim(s) 116-118 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. Claims 18, 80-85, 88-94, 97, 101, 102 and 104 have been canceled. Claims 105-127 have been added. Claims 17 and 105-127 are pending and under consideration.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.
3. Claims 116-118 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 116, 117 and 118 are drawn to a polypeptide of claim 105, 106 or 108 wherein the polypeptide comprises at least 10, 15 and 17 contiguous amino acids of SEQ ID NO:34. The specification as filed states on page 19 lines 4-10 that the invention comprises molecules having the amino acid sequence disclosed in figure 1 (SEQ ID NO:34); fragments thereof having a consecutive sequence of at least 3, 5, 10 or 15 amino acid residues of the Survivin protein. This does not provide support for the claimed variant polypeptides which comprise 10 and 15 consecutive amino acids of SEQ ID NO:34 because no mention was made of the claimed variants having the specific embodiment of 10 and 15 consecutive amino acids of SEQ ID NO:34.

The specification as filed teaches a single 17-mer peptide used for the production of a survivin sequence-specific antibody called JC700 (page 51, lines 20-23). This is not adequate support for a genus of polypeptides comprising 17 contiguous amino acids of SEQ ID NO:34 because no contemplation of any other 17-mer peptide was made in the specification, and because the instant claims are drawn to variant proteins which comprise a 17-mer peptide, not to an amino acid sequence consisting of 17 amino acids of SEQ ID NO:34.

It is noted that applicant lists the support for the instant claims as found within the originally filed claims 88, 89 and 90. However, until the amendment of September 26, 2000,

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claims 88-90 were not introduced into the specification, and were therefore not "original" claims as stated in the response.

4. All other rejections and objections as set forth in the previous Office action are withdrawn.

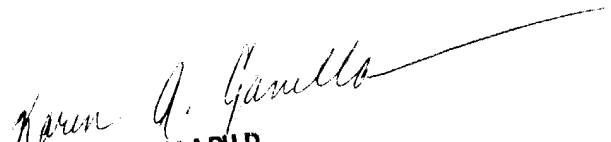
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen A Canella whose telephone number is (571)272-0828. The examiner can normally be reached on 10 a.m. to 9 p.m. M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571)272-0787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karen A. Canella, Ph.D.

8/23/2004

  
KAREN A. CANELLA PH.D.  
PRIMARY EXAMINER